

CLERK OF THE CIRCUIT COURT
REVENUE COLLECTION AND RELATED FEES
JULY 2001

INTRODUCTION AND SCOPE

In cooperation with the Department of Finance, the Office of Law, and the Clerk of the Circuit Court, the County Auditor's office examined the revenues collected by the Clerk of the Circuit Court and the associated fees retained by the Clerk for those collection efforts. We reviewed the various State and County legal authorities providing for these tax and fee collections, performed a walk-through of the process with appropriate personnel, and prepared related flowcharts. We also reviewed several years of collection reports and compared Howard County's fees to other jurisdictions in the State of Maryland. The results of our review are presented on the following pages.

FINDINGS:

The State of Maryland House Bill 792 (HB 792) for the 2000 Regular Session, titled, “Recordation Tax - Payment and Collection,” allows the county tax collectors, rather than the clerks of the courts, to collect recordation taxes beginning in Fiscal Year 2001. This bill passed and became effective on July 1, 2000. This change in the law provided a good opportunity to evaluate the collection of recordation tax revenue in Howard County, its process and the associated expenses. In addition, we looked at the other taxes and fees that are collected by the Clerk of the Circuit Court for Howard County which include transfer taxes, marriage license applications, business licenses, marriage ceremonies, fines and forfeitures, master fees and bar library appearance fees.

Title 2-213 of the Annotated Code of Maryland, Courts and Judicial Proceedings, provides that the Clerk of the Circuit Court is entitled to a maximum 5% of all public money that the Clerk receives, collects and pays over to the County unless otherwise provided in the State law. Howard County currently pays the full 5% for the applicable taxes and fees collected by the Clerk.

Collection Process - Land Records

We examined the collection and recording process for both the recordation and transfer taxes to determine the amount of time required by Circuit Court personnel to perform these functions. A State of Maryland Instrument Intake Sheet is filled out by the customer, checked by a clerk for accuracy, and to calculate taxes due after which payment is made. The records are then scanned, indexed, proofed and recorded. Each of these steps is performed by a different person. The original documents are then mailed back to the customer. Our discussions with Circuit Court personnel and review of the process indicated that the collection process require minimal time compared to the land record recording process.

We looked at the general costs associated with collecting these taxes. In Howard County, the Circuit Court physical facilities are provided by the County, and, therefore, no rent is paid by the State. Employee salaries would be the major expense associated with collecting the taxes. We found that of the 40 employees of the Clerk of the Circuit Court for Howard County, 13 were at some level associated with the land records and tax collection process. Six of these employees were administrative and seven were clerical. All of these employees worked only a portion of their time on collection of taxes due.

_____The staff at the Clerk's office provided us with salary expenses for the seven clerical employees that work directly in the collection process and the six managerial/administrative positions that oversee those clerical employees. As shown in Schedule 3, the total salaries not including fringe benefits, is \$525,792. We were not given any specific additional expenses associated with these salaries such as social security contribution, health insurance, retirement, etc.. We reviewed the Clerk of the Circuit Court's FY 2002 budget submission to determine the additional fringe benefit components. We determined that the additional salary expenses were approximately 30% of the regular earnings, which would be approximately \$157,738. Therefore, total salary and fringe benefits for employees that spend some portion of their time in the collection process and those who manage those employees, totals an estimated \$683,530.

_____We tried to determine what percentage of their total time these employees were spending reviewing and collecting the fees. The Clerk's office does not maintain any specific records that would capture this information. However, based on our physical observations, discussions with the employees, and our flowcharts of the operation, it appears that the collection process did not take more than 20% of the employees' time. The employees felt the majority of their time was spent on the recording process. Using this 20% estimate, the personnel expense associated with those employees who collect the fees and those who manage them would be \$136,706 ($\$683,530 \times .20$).

Recordation Tax

We surveyed the Maryland counties and found that at the time of our review all counties but Prince George's County, used the Clerk to collect the tax. The fee for collecting public money was between 2.5% and 5% with no fee in Prince George's County because it is collected by their Office of Finance. With the passage of HB 792, we found that five counties intended to take over the collection of the recordation tax effective July 1. However, Article IV, Section 10, of the Annotated Code of Maryland requires the Clerk of the Circuit Court be the custodian of the land records. Therefore, the Clerk would still be responsible for recording the instruments of writing and security agreements. The only function that can be taken over by the County is the collection activity.

Because of the custody requirement, the Legislative fiscal note attached to HB 792 stated, "... it is doubtful that the clerks' workload would decrease by an amount sufficient enough to affect expenditures." This appears to be an accurate statement. Additionally, the fiscal note observed that the counties taking over the collection would cause an additional step in the recording process in that

payment would have to occur at the county cashier location, but recorded at the clerk of the court location. For a citizen in Howard County, that would involve additional travel between the courthouse and the George Howard Building. Also, due to the number of new transactions, the County would need to determine how many additional personnel would be needed for these collections.

Schedule 1 presents the various revenues collected in FY 2000 and FY 2001 by the Howard County Clerk of the Circuit Court and the corresponding 5% fee retained. The number of transactions performed for each tax in FY 2001 is also presented. Schedule 2 shows the fee percentage of recordation tax collections retained by the Clerk of the Circuit Court for all counties in Maryland. In the Baltimore metropolitan area, Baltimore County, Anne Arundel County, Harford County and Montgomery County have 3% fees, and Baltimore City has a 2.5% fee.

Although Howard County can take over the recordation tax collection process, it appears that the public would be better served by keeping the collection process with the Clerk of the Circuit Court. Since the Clerk of the Circuit Court must maintain custody of the documents, which takes the majority of the clerical time, maintaining the collection process causes no major reduction in the clerical workload. A savings to the taxpayer would be the elimination of any costs associated with hiring additional personnel at the County to handle the collections. Also, more efficient processing and reduced taxpayer travel is maintained by keeping the function at the Clerk of the Circuit Court. However, we further observed that the rate of 5% of the recordation taxes collected exceeds the cost to provide the service and is higher than our neighboring counties. Schedule 1 shows the actual 5% fee and a 1% fee. The 1% recordation tax fee alone would almost cover the estimated cost for all revenue collection at the Clerk of the Circuit Court's Office.

Transfer Taxes

The County imposes a County transfer tax of 1% for every instrument conveying title in Howard County. This tax authority is derived from the Howard County Code, Subtitle 3, Transfer Tax. This tax is collected before the instrument can be recorded with the County. The Clerk of the Circuit Court retains 5% of the transfer tax collection by authority of Section 2-213 of the Annotated Code of Maryland, Courts and Judicial Proceedings. This is the same section of the State law that pertains to the recordation tax collections. HB 792 pertains to giving counties the authority to take over the collection of recordation taxes. Counties have always had the authority to take over the

collection of transfer taxes. Schedule 1 shows that the number of transfer tax transactions is 40% less than the number of recordation transactions while the amount of fees collected is 56% greater. The process of revenue collection for transfer tax is the same as the recordation tax and does not appear to be a major use of personnel time. The personnel costs associated with the transfer tax collection are included in the \$136,706 estimated cost for collection shown on Schedule 3. The 5% fee exceeds the cost to collect the transfer tax revenues. Schedule 1 shows that a 1% transfer tax fee would equate to \$183,187. This amount is greater than the total estimated collection cost. We surveyed seven of our neighboring counties and found that two of the counties do not have County transfer tax. Of the remaining five, only one county has the Clerk of the Circuit Court collecting transfer tax. The Finance departments have taken over this function in the other five counties. However, based on the issues we raised under recordation tax, taxpayer travel and additional Finance personnel, we still believe this function should physically remain with the Clerk of the Circuit Court. However, a lower fee percentage is justifiable.

Other Taxes

There are three additional revenues where the 5% fee is applied and they are shown in Schedule 1 as Fines and Forfeitures, Master, and Bar Library. The process is similar in that a document is presented and cash is collected. The dollar amounts collected are significantly less than the recordation and transfer tax collections, therefore, the fees paid are reasonable.

Lastly, the marriage license fees collected by the Clerk of the Circuit Court falls under Section 2-204 of the Family Law Article of the Annotated Code of Maryland. The marriage license fee is \$35 with \$5 distributed to the Clerk of the Circuit Court, \$5 to the County General Fund and \$25 to Howard County specifically to fund battered spouse shelters and domestic violence programs. The marriage ceremony fee is under Section 2-410 of the Family Law Article of the Annotated Code of Maryland and allows a charge of \$25 for the Clerk of Deputy Clerk to perform a marriage ceremony. The County General Fund receives \$10 and the State receives \$15. The average number of applications has been 141 a month and average ceremonies have been 61 a month for the last two years. This distribution appears to be in line with the activity.

SUMMARY:

_____Based on our review of expenses and the estimated portion of time associated with the collection of the taxes, we estimate a cost of \$136,000 to collect both the recordation and the transfer tax. Using Fiscal Year 2001 collections as an example, a 1% retention fee would provide approximately \$300,000, which would more than cover the estimated collection cost.

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